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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,666	11/12/2003	Donald E. Weder	8403.696	8043
30589	7590	10/20/2005	EXAMINER	
DUNLAP, CODDING & ROGERS P.C. PO BOX 16370 OKLAHOMA CITY, OK 73113			PALO, FRANCIS T	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/706,666

Applicant(s)

WEDER, DONALD E.

Examiner

Francis T. Palo

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 38-55 is/are pending in the application.
- 4a) Of the above claim(s) 40,41,44-51,53 and 55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38,39,42,43,52 and 54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/12/03, 6/13/05</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Species-I, Aa, Bb, and claims 38, 39, 42, 43, 52 and 54 in the reply filed on 9/27/05 is acknowledged.

### ***Specification***

**The abstract** of the disclosure is objected to because; the limitation, "at least a portion of a musical score," has been deleted from the elected independent claim, and should be likewise deleted from the instant Abstract.

Correction is required. See MPEP § 608.01(b).

**The lengthy specification** has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

**The disclosure** is objected to because of the following informalities:

Appropriate correction is required.

On page-1 of 73:

Paragraph [0001] should be updated to reflect the patent status of US 10/266,192.

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On page-44 of 73:

In the second line; "simply disposed" should be changed to --simply be disposed--.

### ***Claim Objections***

**Claim-38** is objected to because of the following informalities:

The current claim identifier (*Currently Presented*) for the instant claim should be changed to --Currently Amended--; the independent claim was amended in the Preliminary Amendment filed 11/9/04, with the deletion of the limitation, "at least a portion of a musical score,".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 38, 39, 42, 43, 52 and 54** are rejected under 35 U.S.C. 102(b),  
as anticipated by or, in the alternative, under 35 U.S.C. 103(a),  
as obvious over Goertz (EP 412317 A1) 1991.

Regarding **independent claim-38**:

Goertz teaches a **plastic flower-pot cover** in the translated Abstract, wherein a base having the structural features as claimed is readily apparent from the figure.

The base portion of Goertz is readable as formed from a thermal forming process as cited, as thermal forming would be an inherency of the **plastic** consisting device of Goertz.

Goertz further discloses in the Abstract the plastic cover to be provided with a metallized surface (read as; having decorative ornamentation associated with the outer surface); the sidewall outer surface of the Goertz cover is also devoid of any overlapping folds as cited in the instant claim.

Goertz, in the absence of a full translation is silent as to having a graphic image disposed on the sidewall as claimed.

In the absence of any stated problems solved by or any stated advantage obtained by having a graphic image disposed on the sidewall as claimed, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have decorated the sidewall of Goertz as claimed, as further such modification is merely an alternate equivalent surface ornamentation performing the same intended function of decoration.

Regarding **claim-39**:

The discussion above regarding claim-38 is relied upon.

In the absence of a full translation, the Goertz abstract translation cites a flower-pot cover shaped like a champagne bucket, and a closed bottom as claimed is readable on a bucket (buckets have closed bottoms), and further, a closed bottom is readable on a pot cover.

Regarding **claims 42 and 43**:

The discussion above regarding claim-38 is relied upon.

Goertz depicts structure located at the upper end of the cover readable a skirt extending from and connected to the sidewall as claimed.

Regarding **claim-52**:

The discussion above regarding claim-38 is relied upon.

The claim is considered to be a product-by-process claim, nevertheless, Goertz teaches a plastic construction capable of a number of the forming processes as claimed.

The forming processes as claimed would not be expected to impart distinctive structural characteristics to the cover, and therefore the burden shifts to the applicant to show an unobvious difference between the claimed product and the prior art product of Goertz.

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Regarding **claim-54**:

The discussion above regarding claim-38 is relied upon.

The pot cover of Goertz being formed of a plastic is readable as having a semi rigid sidewall, as claimed.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Weder '106 teaches a pot cover having a skirt.

Weder '933 teaches in Figures 8-9 a pot having a skirt which is capable as a pot cover, which further modified is capable of decoration as claimed.

Raymond D'448 and Lynch '142 teach decorated pot covers.

Palmer D'806 and Morley '188 teach skirts extending or connected to the sidewall.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 571-272-6907. The examiner can normally be reached on M-Tu.,Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Francis T. Palo*

Francis T. Palo  
Primary Examiner  
Art Unit 3644